



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-28
August 30, 2007

DEBARMENT AND SUSPENSION RESPONSIBILITIES

BACKGROUND: The NASA FAR Supplement (NFS) currently designates the Assistant Administrator for Procurement as the NASA debarring and suspending official. These responsibilities have been assumed by the Deputy Administrator. This PN revises the NFS to –

1. Delete the designation of the Assistant Administrator for Procurement as the NASA debarring and suspending official; and
2. Define the roles of the Chief Acquisition Officer and the recently created Headquarters Acquisition Integrity Program in the suspension and debarment processes.

ACQUISITIONS AFFECTED BY CHANGES: None.

ACTIONS REQUIRED BY CONTRACTING OFFICERS: Provide copies of information regarding potential suspension or debarment to the Director of the Headquarters Acquisition Integrity Program, with a copy to the Office of Procurement Operations Division, as described in the enclosed change pages.

CLAUSE CHANGES: None.

PARTS AFFECTED: Part 1809.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1809 of the NFS.

TYPE OF RULE AND PUBLICATION DATE: These changes do not have a significant effect beyond the internal operating procedures of NASA and do not have a significant cost or administrative impact on contractors or offerors, and therefore do not require codification in the Code of Federal Regulations (CFR) or publication for public comment.

HEADQUARTERS CONTACT: Tom O'Toole, Contract Management Division, 202-358-0478, email: thomas.otoole@nasa.gov.

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Enclosures

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PART 1809

CONTRACTOR QUALIFICATIONS

Subpart 1809.1--Responsible Prospective Contractors

1809.104-4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting office, the contracting officer shall request from the CCC and any other sources whatever information is necessary to make the responsibility determination. Upon request, CCC shall be furnished the rationale for any subsequent determination of nonresponsibility.

1809.106 Preaward surveys.

1809.106-1 Conditions for preaward surveys.

(a)(i) Preaward surveys are used only to assist the contracting officer to make determinations of responsibility under FAR 9.104. They are not to be used to obtain information useful to proposal evaluation that does not directly relate to the responsibility determination. Accordingly, preaward surveys shall not be used except in rare circumstances when determination of responsibility cannot be made without the specific information that can be provided only in a preaward survey report and only after all other means of obtaining the required information have been explored.

(ii) Surveys shall not be performed for companies of any size performing study or research contracts.

(iii) The procurement officer shall approve all preaward survey requests.

1809.106-2 Requests for preaward surveys.

(a) The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.H. of Section III.

1809.106-3 Interagency preaward surveys.

If the survey will be performed for NASA by a DOD agency, the SF 1403 request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DLAH 4105.4, Attn: Preaward Survey Monitor. DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

1809.106-70 Preaward surveys performed by NASA installations.

In discussions with representatives of the company being surveyed, NASA preaward survey team members shall not refer to or comment on the possibility of award to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

Subpart 1809.2--Qualifications Requirements

1809.200 Scope of subpart.

This subpart prescribes policies and procedures to be followed in the use of qualified products lists for acquisition of parts consistent with the policies of NASA Policy Directive 8730.2, NASA Parts Policy.

1809.202 Policy.

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(e) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests shall be prepared by the cognizant requirements office and submitted via the procurement officer.

1809.203 QPL's, QML's and QBL's.

1809.203-70 General.

(a) The Deputy Associate Administrator for the Office of Safety and Mission Assurance (Code Q), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA EEE Parts and Advanced Interconnect Program.

1809.203-71 Waiver of qualification requirements.

When acquiring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the acquisition can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the acquisition (see FAR Subpart 5.2).

1809.206 Acquisitions subject to qualification requirements.

1809.206-1 General.

(b)(i) The authority to determine that an emergency exists is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(ii) Requests not to enforce a qualification requirement in a nonemergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance (Code Q).

(c) If an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

1809.206-70 Small businesses.

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (Mil-Bul-103) or the Qualified Manufacturers List (QML-38510) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR Subpart 19.6 are applicable.

1809.206-71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209-70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

Subpart 1809.4--Debarment, Suspension, and Ineligibility

1809.404 Excluded Parties List Systems.

- (c) The Chief Acquisition Officer is responsible for taking the actions listed in FAR 9.404(c).

1809.405 Effect of listing.

(a) The Chief Acquisition Officer is the NASA official responsible for making the determination in FAR 9.405(a). If it is believed that a new contract or subcontract must be awarded to a firm included in the Excluded Parties List System, the procurement officer shall prepare a request for a determination with all necessary supporting information and forward it to the Director, Headquarters Acquisition Integrity Program, with a copy to the Office of Procurement (Program Operations Division) for approval.

1809.405-1 Continuation of current contracts.

- (c) Approval of contract renewals or extensions shall be requested in accordance with 1809.405.

1809.405-2 Restrictions on subcontracting.

- (a) Approval of consent to subcontract shall be requested in accordance with 1809.405.

1809.406 Debarment.

1809.406-3 Procedures.

- (a) The report required by FAR 9.406-3(a) shall be prepared in accordance with 1809.470.

1809.407 Suspension.

1809.407-3 Procedures.

- (a) Reports shall be prepared in accordance with 1809.470.

1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2)(A) If the offeror indicates that it has been indicted, charged, convicted, or had a civil judgment rendered against it, the contracting officer shall immediately notify the Director, Headquarters Acquisition Integrity Program, with a copy to the Office of Procurement (Program Operations Division), providing details as known, and shall await a response before awarding the contract.

(B) If the offeror discloses information that indicates a need for a debarment or suspension determination, the contracting officer shall report the facts to the Director, Headquarters Acquisition Integrity Program, with a copy to the Office of Procurement (Program Operations Division), in accordance with 1809.470.

1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.

1809.470-1 Situations requiring reports.

A report incorporating the information required by 1809.470-2 of this section shall be forwarded by the procurement officer to the Director, Headquarters Acquisition Integrity Program, with a copy to the Office of Procurement (Program Operations Division), when a contractor --

(a) Has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2; or

(b) Is suspected of attempting to evade the prohibitions of a debarment or suspension imposed under the FAR by changes of address, multiple addresses, formation of new companies, or other devices.

1809.470-2 Contents of reports.

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

(a) Name and address of the contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.

(i) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(j) Recommendation as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, (3) whether current contracts should be terminated, and (4) the period of any debarment.

(k) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

Subpart 1809.5--Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.

The Assistant Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR Subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Assistant Administrator for Procurement as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 to the Assistant Administrator for Procurement (Code HS) for action.

1809.505-4 Obtaining access to sensitive information.

(b) In accordance with FAR 9.503, the Assistant Administrator for Procurement has determined that it would not be in the Government's interests for NASA to comply strictly with FAR 9.505-

4(b) when acquiring services to support management activities and administrative functions. The Assistant Administrator for Procurement has, therefore, waived the requirement that before gaining access to other companies' proprietary or sensitive (see 1837.203-70) information contractors must enter specific agreements with each of those other companies to protect their information from unauthorized use or disclosure. Accordingly, NASA will not require contractors and subcontractors and their employees in procurements that support management activities and administrative functions to enter into separate, interrelated third party agreements to protect sensitive information from unauthorized use or disclosure. As an alternative to numerous, separate third party agreements, 1837.203-70 prescribes detailed policy and procedures to protect contractors from unauthorized use or disclosure of their sensitive information. Nothing in this section waives the requirements of FAR 37.204 and 1837.204.

1809.506 Procedures.

(b) The approving official is the procurement officer when the installation has source selection authority and the Assistant Administrator for Procurement (Code HS) when NASA Headquarters has that authority.

1809.507 Solicitation provisions and contract clause.

1809.507-2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209-71, Limitation of Future Contracting, in solicitations and contracts.

Subpart 1809.6--Contractor Team Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209-72, Composition of the Contractor, in all construction invitations for bids and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.